

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE)
VARIANCE PERMIT DENIED BY)
MASON COUNTY TO FREDERICK RENKEL,)
DAVID RENKEL and FREDERICK)
RENKEL,)
Appellants,)
v.)
MASON COUNTY and STATE OF)
WASHINGTON, DEPARTMENT OF)
ECOLOGY,)
Respondents.)

SHB No. 85-6

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, a request for review of a shoreline variance permit denied by Mason County to Frederick Renkel came on for hearing before the Shorelines Hearings Board, Lawrence J. Faulk, Chairman, Gayle Rothrock, Wick Dufford, Nancy Burnett, Dennis Derickson, Les Eldridge, Members, convened at Lacey, Washington, on August 1, 1985. Administrative Appeals Judge William A. Harrison presided.

Appellant David B. Renkel appeared and represented himself.

1 Respondent Mason County appeared by John H. Buckwalter, Deputy
2 Prosecuting Attorney. Respondent Department of Ecology did not
3 appear. Reporter Lisa Flechtner recorded the proceedings.

4 Witnesses were sworn and testified. Exhibits were examined. From
5 testimony heard and exhibits examined, the Shorelines Hearings Board
6 makes these

7 FINDINGS OF FACT

8 I

9 This matter arises on Totten Inlet in Mason County.

10 II

11 The beds of Totten Inlet are extensively used for commercial
12 oyster growing.

13 III

14 Appellant, David B. Renkel, co-owns a five acre lot on Totten
15 Inlet which he acquired during or after 1982.

16 IV

17 At the time of purchase and presently, the sloping lot is crossed
18 at two locations by a switch-back road. The lower road segment is
19 about 50 feet from the ordinary high water mark.

20 V

21 Mr. Renkel has constructed, and is expanding, a substantial home
22 between the road segments. Waterward of the lower road segment he has
23 cleared and leveled the area, which is now a lawn and garden.

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25
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VI

The view of Totten Inlet from the Renkel home is obscured by two strips of small maple and alder left standing when the lot was cleared. These could be trimmed or cut to permit an attractive water view from the Renkel home.

VII

The Renkel family now enjoys comfortable access to its lawn, garden and beachfront.

VII

As a means of enhancing his family's enjoyment of their property, Mr. Renkel applied to Mason County for a shoreline variance permit to construct a structure on the lawn below the road. The structure would be for both recreational use, that is, a "cabana," and for the storage of lawn chairs, water-play equipment and so forth. It would be 12'x16' high with an 8'x16' deck on its waterward side.

IX

The Mason County Shoreline Master Program (MCSMP) designates the site as conservancy and imposes a building setback of 50 feet from the water's edge. MCSMP Designation Map and Section 7.20.030B., page 54. The proposed Renkel structure would be wholly within (waterward of) the setback and for this reason a variance was sought.

X

The variance standard of the master program is:

Variance deal with specific requirements of this ordinance and the objective is to grant relief when there are practical difficulties or unnecessary hardships in the way of carrying out the strict

1 letter of this ordinance. The property owner must
2 show that if he complies with the provisions, he
3 cannot make any reasonable use of his property.
4 The fact that he might make a greater profit by
5 using his property in a manner contrary to the
6 intent of this ordinance is not a sufficient reason
7 for a variance. A variance will be granted only
8 after the applicant can demonstrate the following:

9 A. The hardship which serves as a basis for
10 the granting of a variance is specifically
11 related to the property of the applicant.

12 B. The hardship results from the application
13 of the requirements of the Shoreline
14 Management Act and this ordinance and not
15 from, for example, deed restrictions or the
16 applicant's own actions.

17 C. The variance granted will be in harmony
18 with the general purpose and intent of this
19 ordinance.

20 D. Public welfare and interest will be
21 preserved; if more harm will be done to the
22 area by granting the variance than would be
23 done to the applicant by denying it, the
24 variance will be denied.

25 MCSMP section 7.28.020, page 66. (Emphasis added.)

26 XI

27 The master program states, however, that there "shall be no
exceptions for structural setbacks" in the conservancy environment for
residential development. Section 7.16.080C.1., page 29.

XII

All provisions of the master program cited herein were in effect
when appellant acquired the site.

XIII

There is a structure similar to the one proposed, within the

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1 setback, two lots away from the one in question.

2 XIV

3 On January 14, 1985, Mason County denied the variance request and
4 filed its denial with Department of Ecology on January 25, 1985.

5 Mr. Renkel filed a request for review before this Board on February
6 25, 1985.

7 XV

8 Any Conclusion of Law hereinafter determined to be a Finding of
9 Fact is hereby adopted as such.

10 From these Facts, the Board comes to these

11 CONCLUSIONS OF LAW

12 I

13 Appellant, having requested review, bears the burden of proof in
14 this proceeding. RCW 90.58.140(7).

15 II

16 We review the proposed development for consistency with the
17 applicable (Mason County) shoreline master program and the Shoreline
18 Management Act (SMA). RCW 90.58.140.

19 III

20 The 50 foot building setback under consideration is a dimensional
21 standard. The SMA is implemented by WAC 173-14-150 under which the
22 purpose of a variance is to grant relief from bulk, dimensional or
23 performance standards. Appellant has made no request to vary the
24 residential use to which the shoreline area would be put. Residential
25 use is permitted outright in this case. MCSMP section 7.16.080C.,

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1 page 29. Appellant's application is not for a conditional use as
2 contended by respondent, but is properly classified as an application
3 for variance.

4 IV

5 The proposed structure, accessory to a residence, would be
6 residential development. As we have found, the local master program
7 prohibits setback exceptions for residential development in the
8 conservancy environment under consideration (Finding of Fact XI,
9 above). However, we must also apply the statutory requirement of the
10 SMA at RCW 90.58.100(5) that:

11 Each master program shall contain provisions to
12 allow for the varying of the application of use
13 regulations of the program, including provisions
14 for conditional uses and variances, to insure that
strict implementation of a program will not create
unnecessary hardships or thwart the policy
enumerated in RCW 90.58.020.

15 V

16 In this case, appellant has not proven that implementation of the
17 master program prohibition against setback exceptions, section
18 7.16.080C.1., will result in unnecessary hardship or thwart the policy
19 of the SMA in violation of RCW 90.58.100(5) quoted above. Moreover,
20 we conclude that appellant can make a reasonable use of his property
21 if he complies with the setback, and so would not be entitled to a
22 conventional variance under Section 7.28.020 of the master program
23 (quoted at Finding of Fact X, above) notwithstanding the setback
24 exception prohibition at Section 7.16.080C.1. of the master program.
25 The denial of appellant's variance application by Mason County should

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1 therefore be affirmed.

2 VI

3 Our decision today does not uphold the no-exception rule (Section
4 7.16.080C.1.) universally, but only on the facts of this case. Were
5 the appellant in another case able to show entitlement under the
6 conventional variance standard (Section 7.28.020), that is, that
7 strict implementation of a setback would leave him with "no reasonable
8 use of his property," the no-exception rule of the master program
9 would appear in a different light relative to RCW 90.58.100(5)
10 requiring that master programs not create unnecessary hardships or
11 thwart the policy of the SMA. Mason County may therefore wish to
12 consider its conventional variance standard in all requests for
13 setbacks variance.

14 VII

15 Generally, it is beyond our purview to take evidence on whether
16 other structures similar to the one before us have been constructed
17 without permits and in violation of the local master program. Such
18 violation would not justify further violation in the case before us.
19 Nor do we have the authority to correct violations outside the permit
20 review process. Mason County does have the authority to correct
21 violations by both civil and criminal process. RCW 90.58.210, .220
22 and .230. If other structures similar to the one proposed were built
23 without permit and in violation of the master program, it is just
24 cause for disesteem of government by those who have sought permits.
25 We urge Mason County to investigate and, if violations are found, to

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1 carry out the enforcement function delegated to it by the legislature.

2 VIII

3 Any Finding of Fact which is deemed a Conclusion of Law is hereby
4 adopted as such.

5 From these Conclusions of Law, the Board enters this
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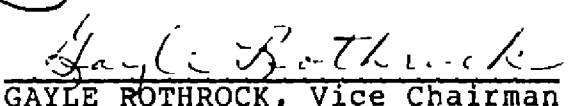
ORDER.

The denial of a shoreline variance permit by Mason County to David B. Renkel is affirmed.

DONE at Lacey, Washington this 5th day of September, 1985.

SHORELINES HEARINGS BOARD

 9/4/85
LAWRENCE A. FAULK, Chairman


GAYLE ROTHROCK, Vice Chairman


WICK DUFFORD, Lawyer Member


NANCY BURNETT, Member


DENNIS DERICKSON


LES ELDRIDGE


WILLIAM A. HARRISON
Administrative Appeals Judge

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